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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 95-34
Table of Allotments,) RM-8600
FM Broadcast Stations)
(Rapid City, South Dakota))

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To: The Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

REPLY COMMENTS OF CONWAY BROADCASTING

Conway Broadcasting ("Conway"), by its attorneys and pursuant to Section 1.415(c) of the Commission's Rules, hereby submits its reply comments in the above-referenced proceeding. In support thereof, the following is shown:

1. On March 29, 1995, the Commission released a *Notice of Proposed Rulemaking* in MM Docket No. 95-34, DA 95-584 (the "*NPRM*"), proposing the allotment of Channel 222C to Rapid City, South Dakota.

2. On May 22, 1995, Associated Investors, Inc. ("AII"), the licensee of KSQY(FM), Deadwood, South Dakota, filed comments and a counterproposal in response to the *NPRM*. AII requested that the Commission amend the Table of Allotments to add Channel 222C to Lead, South Dakota, instead of Rapid City. AII asserted Channel 222 was the only channel that could be proposed in full compliance with the FCC's rules, and that since Lead has no local broadcast outlet, it is deserving of a dispositive preference under the third FM priority as compared to Rapid City.

3. Conway reaffirms its continuing interest in the allotment of a new class C channel in Rapid City. Conway need not dispute All's recital of the Commission's FM assignment policies and procedures, as it has developed the following alternative counterproposal that would allow for new FM stations at both Lead and Rapid City.

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Rapid City, South Dakota	230C1, 250C1 254C1, 262C1 281C1, 292C	222C, 230C1 250C1, 254C1 262C1, 281C1 292C
Lead, South Dakota	-----	277C
Sundance, Wyoming	276A	252A

This alternative proposes the allotment of Channel 277C at Lead in addition to Channel 222C at Rapid City. In order to accommodate the allotment of Channel 277C at Lead, Conway proposes the substitution of Channel 252A for Channel 276A at Sundance, Wyoming. All required FCC spacing requirements are met by substituting Channel 252A at the present Sunrise Channel 276A reference point. 47 C.F.R. §73.207. For allotment purposes, the Commission considers all channels of the same class to be equivalent. *See, e.g., Elkins, West Virginia*, 7 FCC Rcd 5527, 5529 (MM Bur., 1992). Moreover, Channel 276A at Sundance is vacant and has been available on a first-come, first-served basis since February 24, 1993. No applications are currently on file for Channel 276A at Sundance. Hence, the substitution of Channel 252A for Channel 276A would not even impact any known planned operations. It is well-established that the Commission favors multiple rather than single allotments. *See, e.g., Williston and Miconopy, Florida*, 50 R.R.2d 1425 (B'cast Bur., 1982). A grant of Conway's alternative proposal will thus far better serve the purposes of Section 307(b) of the

Communications Act and the goal of spectral efficiency than will adoption of AII's single allocation proposal.

4. Contrary to AII's counterproposal, Channel 222C is thus **not** the only channel that could be allocated to Lead in full compliance with the FCC's rules. With a simple substitution at Sundance, equivalent Channel 277C can be allocated at Lead in full compliance with the FCC's rules. Given the fact that Conway has provided a counterproposal which would accommodate the proposed Lead allotment without affecting the proposed Rapid City allotment, the Commission should not consider the two allocation proposals in the same docket. Consolidation of the proposals would only serve to complicate and unnecessarily delay the implementation of an additional service at Rapid City.

5. Therefore, in view of the foregoing, Conway respectfully requests that the Commission adopt the alternative proposed by Conway, and promptly allocate Channel 222C at Rapid City, South Dakota.

Respectfully submitted,

CONWAY BROADCASTING

By: 

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June 6, 1995

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**ENGINEERING EXHIBIT FOR
CONWAY BROADCASTING
FM CHANNEL 222C
RAPID CITY, SOUTH DAKOTA**

This engineering exhibit was prepared in response to comments filed by Associated Investors, Inc. ("Associated"), in MM Docket 95--34 (RM--8600) which proposes to allot FM channel 222C to Rapid City, South Dakota.

In their Comments and Counterproposal, Associated counterproposes that instead of Rapid City, channel 222C be allotted to Lead, South Dakota as its first local aural service. The Lead reference point used is the licensed tower site of Associated's KSQY (FM), Deadwood, South Dakota. Associated submits an engineering statement which shows compliance with FCC spacing rules and also states that there are no other channels available for use at Lead, South Dakota.

Contrary to Associated's claim, equivalent channel 277C can be allotted to Lead, South Dakota at the specified reference point if channel 276A at Sundance, Wyoming is deleted. Channel 276A at Sundance is vacant and has been eligible for "first come-first served" applications since February 24, 1993. No applications are currently on file for channel 276A at Sundance.

Equivalent channel 252A is available for substitution at Sundance, Wyoming. All required FCC spacings are met at the present Sundance channel 276A reference point.

Since there is an alternate channel available for use at Lead, South Dakota, and since allotment of that channel merely requires substitution of an unused

allotment at Sundance, Wyoming, it is respectfully stated that the Commission's goal of efficient frequency distribution would be better advanced by allotment of channel 277C to Lead, South Dakota, channel 222C to Rapid City, South Dakota, and substitution of channel 252A for 276A at Sundance, Wyoming.

Table 1 attached shows the allocation situation for channel 277C at Lead, South Dakota if 276A is deleted at Sundance and Table 2 attached shows the allocation situation for channel 252A at Sundance, Wyoming.

This engineering exhibit was prepared by me and is true and correct to the best of my knowledge and belief.

June 2, 1995



Mark A. Mueller

TABLE 1
LEAD, SOUTH DAKOTA CHANNEL 277C
ALLOCATION STUDY

<u>CHANNEL</u>	<u>CALLSIGN</u>	<u>LOCATION</u>	<u>REQUIRED</u>	<u>ACTUAL</u>
220		No stations clear by less than 75 kilometers.		
221		No stations clear by less than 75 kilometers.		
274		No stations clear by less than 75 kilometers.		
275		No stations clear by less than 75 kilometers.		
276		No stations clear by less than 75 kilometers.		
277		No stations clear by less than 75 kilometers.		
278		No stations clear by less than 75 kilometers.		
279		No stations clear by less than 75 kilometers.		
280		No stations clear by less than 75 kilometers.		

Reference point: 44° 19' 49"N - 103° 50' 10"

(Assumes that channel 276A at Sundance, Wyoming is deleted.)

TABLE 2
SUNDANCE, WYOMING CHANNEL 252A
ALLOCATION STUDY

<u>CHANNEL</u>	<u>CALLSIGN</u>	<u>LOCATION</u>	<u>REQUIRED</u>	<u>ACTUAL</u>
249	No stations clear by less than 75 kilometers.			
250 C1	KLMP	Rapid City, SD	75	98.8
251	No stations clear by less than 75 kilometers.			
252 A	KERM	Torrington, WY	115	267.8
252 C3	(vacant)	Torrington, WY	142	267.8
254 C1	KOUT (cp)	Rapid City, SD	75	97.4
254 C1	KOUT (app)	Rapid City, SD	75	97.4
255	No stations clear by less than 75 kilometers.			

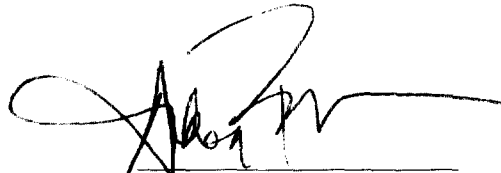
Reference point: 44° 25' 06"N - 104° 22' 43"

CERTIFICATE OF SERVICE

I, Andrea L. Brown, do hereby certify that on this 6th day of June, 1995, a true and correct copy of the foregoing "REPLY COMMENTS OF CONWAY BROADCASTING" has been sent by United States Mail, First Class Postage Prepaid, to the following:

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Andrea L. Brown